



Federal Communications Commission
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SMALL ENTITY COMPLIANCE GUIDE

Advanced Methods to Target and Eliminate Unlawful Robocalls
FCC 20-96
CG Docket No. 17-59
Released July 17, 2020

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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TABLE OF CONTENTS

I.	OBJECTIVES OF THE PROCEEDING	1
II.	COMPLIANCE REQUIREMENTS	1
III.	RECORDKEEPING AND REPORTING REQUIREMENTS	2
IV.	IMPLEMENTATION DATE	2
V.	INTERNET LINKS	3

I. OBJECTIVES OF THE PROCEEDING

In this *Third Report and Order* in CG Docket No. 17-59, the Commission took important steps in the fight against illegal robocalls by enabling terminating voice service providers to block certain calls before they reach consumers' phones while also requiring certain protections for lawful calls.

First, the *Third Report and Order* established a safe harbor for terminating voice service providers that block calls on a default, opt-out, basis based on reasonable analytics. The analytics must include caller ID authentication information and the customer must be given sufficient information to make an informed choice. Second, it established a safe harbor for voice service providers that block and then cease accepting all traffic from an upstream voice service provider. The safe harbor is only available when the traffic comes from an upstream provider that has been notified by the Commission that it is carrying bad traffic and fails to effectively mitigate such traffic or fails to implement effective measures to prevent new and renewing customers from using its network to originate illegal calls. Finally, the Commission also adopted rules to ensure that callers and other voice service providers can resolve potential erroneous blocking and to require that all voice service providers make all reasonable efforts to ensure that critical calls complete.

Reasonable Analytics. The *Third Report and Order* provided a safe harbor from liability under the Communications Act and the Commission's rules for voice service providers that block calls based on reasonable analytics. These reasonable analytics must include Caller ID authentication information. Additionally, consumers must be given a meaningful opportunity to opt out.

Bad Actor Providers. The *Third Report and Order* established a safe harbor for terminating voice service providers that block calls from certain upstream voice service providers. First, the upstream voice service provider must be notified by the Commission that it is carrying bad traffic. If that upstream voice service provider either fails to effectively mitigate such traffic or fails to implement effective measures to prevent new and renewing customers from using its network to originate illegal calls, then a downstream voice service provider may block all calls from that upstream voice service provider.

Other Issues. The *Third Report and Order* clarified that any terminating voice service provider that blocks calls must designate a single point of contact for callers to report blocking errors at no charge. It further made clear that blocking providers must investigate and resolve these blocking disputes in a reasonable amount of time that is consistent with industry best practices. It further made clear that the Commission expects that all voice service providers will take all possible steps to ensure that calls from Public Safety Answering Points (PSAPs) and government outbound emergency numbers are not blocked and that calls to 911 should never be blocked unless the voice service provider knows without a doubt that the calls are unlawful.

The decisions made in this *Third Report and Order* will shield voice service providers from liability for certain types of call blocking while protecting the most important lawful calls. These decisions will further the Commission's goal of combating unwanted and illegal calls while ensuring that consumers continue to receive the calls that they want.

II. COMPLIANCE REQUIREMENTS

The *Third Report and Order* makes rule changes to section 64.1200; it provides protections to voice service providers that block calls in certain instances as set forth below while simultaneously establishing certain requirements to address the risk that lawful calls may be blocked.

Call Blocking Safe Harbors (47 CFR §§ 64.1200(k)(3)-(4))

- Under section 64.1200(k)(3), voice service providers are shielded from liability for blocking lawful, wanted calls so long as they do so on a consumer opt-out basis using reasonable analytics.

These analytics must incorporate caller ID authentication information when available. A voice service provider that has not implemented an effective caller ID authentication system cannot satisfy the requirement to incorporate caller ID authentication information and therefore does not qualify for the safe harbor. All analytics must be applied in a non-discriminatory, competitively neutral manner. Voice service providers that block under this safe harbor must also satisfy redress requirements established elsewhere in the rules.

- Under section 64.1200(k)(4), a voice service provider may block calls or cease accepting traffic from a particular upstream voice service provider without liability once certain criteria are met. This safe harbor provides protection to a downstream voice service provider when the Commission has notified a particular upstream voice service provider of illegal traffic on that upstream voice service provider's network and the upstream voice service provider either fails to effectively mitigate that illegal traffic within 48 hours or fails to implement effective measures to prevent new and renewing customers from using its network to originate illegal calls. Prior to blocking calls, the downstream voice service provider shall notify the Commission of its intention to block calls and the basis for that decision. Section 64.1200(f)(17) defines "effectively mitigate" for purposes of this rule, which includes identifying the source of the illegal traffic and preventing that source from continuing to originate the same or similar traffic.

Call Blocking Redress Requirements (47 CFR §§ 64.1200(k)(5)-(8))

- Under section 64.1200(k)(5), voice service providers must not block an emergency call placed to 911. This requirement applies to any voice service providers that blocks under sections 64.1200(k)(1)-(4). This rule was previously located at section 64.1200(k)(3). The *Third Report and Order* expanded the application of this rule to the call blocking safe harbors adopted in sections 64.1200(k)(3)-(4).
- Under 64.1200(k)(6), voice service providers that block calls under section 64.1200(k)(1)-(4) must make all reasonable efforts to ensure that calls from public safety answering points and government emergency numbers are not blocked.
- 64.1200(k)(7) was previously 64.1200(k)(4). It makes clear that voice service providers do not need to determine whether a particular call actually originated from the phone number shown on the caller ID before blocking the call. This does not change the requirement to incorporate caller ID authentication information for the safe harbor in 64.1200(k)(3).
- Under 64.1200(k)(8), a voice service provider must provide a single point of contact for handling call blocking disputes. The point of contact must be readily available on the voice service provider's public-facing website. Voice service providers are also required to resolve disputes within a reasonable amount of time and at no charge to callers.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission's actions in the *Third Report and Order* did not create any new recordkeeping or reporting requirements.

IV. IMPLEMENTATION DATE

The rules in the *Third Report and Order* shall become effective 30 days after publication of the text or summary thereof in the Federal Register. The summary was published in the Federal Register on September 14, 2020, and the rules became effective on October 14, 2020.

V. INTERNET LINKS

A copy of the *Third Report and Order* is available at: https://docs.fcc.gov/public/attachments/FCC-20-96A1_Rcd.pdf.

A copy of the Federal Register Summary of the *Third Report and Order* is available at: <https://www.govinfo.gov/content/pkg/FR-2020-09-14/pdf/2020-17268.pdf>.